IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 14536 of 1993

Between:

S.Pradeep Kumar, S/o. S.Vishwanath, aged 28 years,

Occupation: Assistant Lecturer, Jawaharlal Nehru Technological

Universityi College of Fine Arts, Mahaveer Marg, Masab Tank,

Hyderabad and R/o. Hyderabad.

..... PETITIONER

AND

1.Jawaharlal Nehru Technological University, represented by its

Registrar, Mahaveer Marg, Masab Tank, Hyderabad.

2.The Principal, Jawaharlal Nehru Technological University College of

Fine Arts, Mahaveer Marg, Masab Tank, Hyderabad.

3.K.Dasarath Reddy, S/o. K.Laxma Reddy, aged about 47 years,

Principal, Jawaharlal Nehru Technological University College of

Fine Arts, Mahaveer Marg, Masab Tank, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for records pertaining to the impugned orders contained in Proceedings No.C1/2768/92, dated 04-02-1993, issued by the Respondent No-1 herein and consequently quash the same as illegal, arbitrary, unconstitutional, malafide, vioid-ab-initio and violative of the Principles of Natural Justice by issuing a writ of

certiorari.

Counsel for the Petitioner: MR.P.V.SANJAY KUMAR

Counsel for the Respondents: M/S.C.KODANDA RAM, STANDING COUNSEL.

The Court made the following:

THE HONOURABLE SRI JUSTICE D.S.R.VARMA

W.P.NO.14536 OF 1993

ORAL ORDER:

Heard both sides.

2. Challenging the proceedings No C1/2768/92, dated 04-02-1993, of the first respondent, wherein and whereby the petitioner was imposed a punishment of withholding of two increments with cumulative effect and recovery of certain amount was ordered from

the petitioner, in respect of certain claims alleged to have been made by the petitioner, the present writ petition has been filed.

3. In nutshell the facts shorn of are as under:

The petitioner while discharging his duties as Lecturer in Photography, Jawaharlal Nehru Technological University, submitted certain bills atone. Those bills were to be *firstly*; faked and secondly those bills were furnished belatedly i.e., after a long lapse of 17 months. After conducting a preliminary enquiry, a charge sheet has been issued to the petitioner to which the petitioner had offered his explanation. Subsequently, a regular enquiry had been conducted by the Enquiry Officer, appointed by the University. During the course of enquiry, the evidence on record had been scrutinized and eventually the Enquiry Officer came to the conclusion that the guilt on the part of the petitioner had been established and accordingly recommended punishment.

4. The competent authority having gone into the merits of the case and the report submitted by the Enquiry Officer and also having gone through the other aspects agreed with the finding given by the Enquiry Officer. Basing on the said report, an explanation again had been called for from the petitioner, to which with due promptitude an explanation had been offered by the petitioner. Considering the said explanation, the competent authority, having regard to the reasoning and the consequential recommendation made by the Enquiry Officer finding the petitioner guilty of the charges, passed the impugned order imposing a punishment of stoppage of 2 increments with cumulative effect and also to recover a sum of Rs.30,000/- which was said to have been drawn by the petitioner as an advance for the

purpose of a student tour. Challenging the said impugned order, dated 04-02-1993, the present writ petition has been filed.

5. The learned counsel for the petitioner vehemently contends that the procedure, right from the beginning, for the purpose of conducting an enquiry had not been satisfactorily followed. It is his further contention that the relevant material relied on by the Enquiry Officer and the authority, which issued the charge sheet, were not made available to the petitioner to effectively contest the enquiry. It is also his further assertion/contention that the witnesses who were examined on behalf of the respondents were not allowed to be cross-examined by the petitioner and that there was no access for the petitioner during the course of enquiry to look into the material, which was relied on by the Enquiry Officer to arrive at the conclusion that he was guilty of the charges.

6. It is to be noted that the petitioner except offering an explanation, in fact, did not participate in the enquiry, as could be seen from the record, i.e., the report of the Enquiry Officer. However, it could be seen from the report of the Enquiry Officer that the entire material, including the bills, which are in controversy, were also scrutinized carefully. Some discrepancies were also found as recorded by the Enquiry Officer.

7. From a perusal of the report of the Enquiry Officer, it is further revealed that during the course of enquiry, the petitioner never made any attempt requesting the respondent to supply him the necessary material in order to defend himself. However, it appears that the petitioner made such attempt after the impugned proceedings were issued. This step on the part of the petitioner raising a demand for

supply of material only after passing of the impugned order sis of no use when he did not participate in the enquiry in person and defend effectively.

8. Whether or not to examine any witnesses in a departmental enquiry is the choice of the employer. If the employer does not choose to examine anybody and simply presses into service the relevant material and if the Enquiry Officer feels that the material supplied to him during the enquiry itself is sufficient to go into the charges, depending upon the nature of the charges, the finding recorded by the Enquiry Officer, solely based on such material, cannot be faulted on that ground. In other words, in all cases it is not necessary for the employer to examine the witnesses. If certain facts are to be established, depending upon the nature of the charges, by examining the witnesses, the employer may choose to do so. But, after going through the material before the Enquiry Officer vis-à-vis, the charges, in a given case, there is nothing wrong on the part of the Enquiry Officer to go into such documents and arrive at a conclusion.

9. Of course, such a conclusion of the Enquiry Officer is again subject to the satisfaction of the competent authority. In the present case, the competent authority was satisfied with the report of the Enquiry Officer and passed the impugned order. Therefore, I am of the opinion that there is no palpable irregularity in the conduct of enquiry, which is capable of vitiating the whole procedure adopted by the employer and the Enquiry Officer.

10. Further, it is well established principle of law that when once the Enquiry Officer formed an opinion and the said opinion is accepted by the appointing authority/competent authority, this Court

in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot go into the aspect of reappraisal of entire evidence in order to arrive at a different conclusion, barring few exceptional cases. Even_in such cases also, this Court cannot interfere with the quantum of punishment. At best, this Court can direct the respondents to reconsider the proportionality of the punishment awarded.

11. Therefore, this Court is restrained from expressing any opinion on the merits of the case except that there is no apparent illegality or irregularity causing prejudice to the cause of the petitioner is found.

12. Further, it is brought to the notice of this Court by the learned Standing Counsel appearing on behalf of the respondents-University that an alternative efficacious remedy of appeal is available to the petitioner under the Jawaharlal Nehru Technological University Act, 1972 (Act No.16 of 1972) (for brevity “the Act”), which is not in dispute.

13. Undisputedly, the petitioner did not avail of the benefit of preferring an appeal, as provided under the said Act.

14. Therefore, the petitioner is given liberty to prefer an appeal to the authority prescribed under the Act seeking appropriate relief.

15. Accordingly and for the foregoing reasons, the petitioner is at liberty to prefer an appeal before the authority prescribed under the Act seeking appropriate relief within a period of eight weeks from today and upon such an appeal being preferred, the appellate authority shall consider the same without raising any objection as

regards the limitation and pass appropriate orders, in accordance with law.

16. It is made clear that this Court should not be understood by this order as having expressed any opinion on the merits of the case and the decision to be taken by the appellate authority shall be uninfluenced by any of the observations made either by the Enquiry Officer, the competent authority, which passed the impugned order, or by this Court.

17. With the above directions and observations, the writ petition is disposed of. However, there shall be no order as to costs.

D.S.R.VARMA, J

05TH NOVEMBER 2004

KRK

To:

1.The Registrar, Jawaharlal Nehru Technological University, Mahaveer Marg, Masab Tank, Hyderabad.

2.The Principal, Jawaharlal Nehru Technological University College of Fine Arts, Mahaveer Marg, Masab Tank, Hyderabad.

3.Sri K.Dasarath Reddy, S/o. K.Laxma Reddy, aged about 47 years, Principal,

Jawaharlal Nehru Technological University College of Fine Arts, Mahaveer Marg, Masab Tank, Hyderabad.

4.Two CD copies.